

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MC ALLEN DIVISION

CARLO CORDOVA,	)	CASE NO: 7:17-CV-00014
	)	
Plaintiff,	)	CIVIL
	)	
vs.	)	McAllen, Texas
	)	
ROY PADILLA, ET AL,	)	Wednesday, April 18, 2018
	)	
Defendants.	)	(4:13 p.m. to 4:28 p.m.)

HEARING ON MOTION FOR SUMMARY JUDGMENT

BEFORE THE HONORABLE RICARDO H. HINOJOSA,  
CHIEF UNITED STATES DISTRICT JUDGE

Appearances: See next page

Court Recorder: Antonio Tijerina

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**APPEARANCES FOR:**

**Plaintiff:**

JOHN F. MELTON, ESQ.  
Melton Kumler  
2705 Bee Cave Rd., Suite 220  
Austin, TX 78746

PETER E. FERRARO, ESQ.  
1504 West Ave.  
Austin, TX 78701

**Defendants:**

EDUARDO G. GARZA, ESQ.  
Esparza Garza  
964 E. Los Ebanos  
Brownsville, TX 78520

1           McAllen, Texas; Wednesday, April 18, 2018; 4:13 p.m.

2   (Call to order)

3           **THE COURT:** Next case is civil action Number M-17-14,  
4   *Carlos [sic] Cordova versus Roy Padilla* and others.

5           **MR. FERRARO:** Pete Ferraro and John Melton for the  
6   Plaintiff, your Honor.

7           **MR. GARZA:** Good afternoon, your Honor, Eddie Garza  
8   here on behalf of Defendants.

9           **THE COURT:** Okay, we have the motion for summary  
10   judgment that is pending. There's a false arrest claim here,  
11   there's the retaliation claim, along with a conspiracy, in  
12   relationship to both of these claims. Let me get the timeline  
13   straight here. The allegations came to someone in the school  
14   district in November of 2014 through -- from the grandmother;  
15   is that correct?

16           **MR. SPEAKER:** I believe that is correct. Or 2015.

17           **THE COURT:** Okay. I think --

18           **MR. MELTON:** It's November, 2014.

19           **THE COURT:** -- 2014.

20           **MR. GARZA:** Correct.

21           **THE COURT:** That was the first time that there was  
22   any kind of official notice to the school by somebody, --

23           **MR. GARZA:** That's correct.

24           **THE COURT:** -- and it was the grandmother.

25           **MR. GARZA:** That's correct.

1           **THE COURT:** Okay, there's an arrest warrant that  
2 comes out in January of 2015.

3           **MR. FERRARO:** That's correct.

4           **THE COURT:** There was a school board election at some  
5 point, but was that in April of 2014 or --

6           **MR. SPEAKER:** November.

7           **THE COURT:** -- when was that school board election?

8           **MR. MELTON:** November of 2014.

9           **THE COURT:** They had a school board election in  
10 November; are you sure?

11           **MR. FERRARO:** I believe so, your Honor.

12           **MR. MELTON:** I believe so. They were called "Team  
13 November" and --

14           **MR. GARZA:** I think that is correct, your Honor,  
15 their election --

16           **MR. FERRARO:** They were called "Team November."

17           **MR. GARZA:** I know their elections happened in  
18 November so I don't dispute that it probably would have been an  
19 electoral month.

20           **THE COURT:** Aren't school board elections usually in  
21 April?

22           **MR. GARZA:** They can -- different school districts  
23 can make options to have theirs November as well. They can  
24 change.

25           **MR. FERRARO:** Maybe that's why they were called "Team

1 November," your Honor, because it was unusual.

2 MR. MELTON: I'm almost positive --

3 MR. GARZA: Different school --

4 MR. MELTON: -- it was in November.

5 THE COURT: So nobody really knows.

6 MR. GARZA: It was in November.

7 MR. FERRARO: No, it was in November.

8 MR. GARZA: It was in November. Different school

9 districts --

10 THE COURT: Of 2014?

11 MR. FERRARO: Yes, your Honor.

12 MR. MELTON: Correct.

13 THE COURT: Okay, and so how many days after or  
14 before the grandmother had come to the school?

15 MR. MELTON: I believe it was a few days before. She  
16 came to the school on November the 14th. It's the Donna ISD  
17 police. And I believe the elections --

18 THE COURT: Wouldn't the election happen before  
19 November 14th?

20 MR. MELTON: Yes, I believe so. So I believe the  
21 election happened a few days before she went to --

22 THE COURT: So how could any of this be connected to  
23 anything that happened with regards to the election?

24 MR. MELTON: It was in retaliation for --

25 THE COURT: Retaliation, somebody comes to you and

1 the grandmother says and information is -- they actually go  
2 through the whole process. They find the fact that there was  
3 really a visit to the hotel on a certain day, that he actually  
4 took the young girl to the drug store for to purchase something  
5 with regards to a potential situation, and so how would this be  
6 retaliation for something about something that the school board  
7 knew nothing about until after the election?

8 **MR. FERRARO:** May I, your Honor?

9 **THE COURT:** Well, somebody needs to.

10 **MR. FERRARO:** This isn't the first time that she went  
11 to the school board with this complaint. This is the first  
12 time she went to the Donna ISD police department to file a  
13 report. I'm not sure what time she called. What she did was,  
14 there was an existing superintendent, and this lady was working  
15 for "Team November." And she called the person who was going  
16 to be the next superintendent --

17 **THE COURT:** The grandmother?

18 **MR. FERRARO:** The grandmother called the person's  
19 wife who works for the school district who's going to be the  
20 next superintendent if "Team November" gets their way, and she  
21 called her and told her about it. And I believe that was  
22 before the election, but I don't know that for certain, your  
23 Honor.

24 **MR. MELTON:** Yeah, and --

25 **THE COURT:** But the grandmother --

1           **MR. FERRARO:** But I know (indisc.) the record --

2           **THE COURT:** -- has nothing to do with the school  
3 district.

4           **MR. MELTON:** No.

5           **THE COURT:** That's not retaliation by the school  
6 board. The school board finds out in November from the  
7 grandmother that there are these horrible fact patterns that  
8 the grandmother is alleging with regards to the child, to the  
9 student. And the school board actually finds more information.  
10 They actually went and proceeded to find that the Plaintiff  
11 here actually had been at the hotel, that he had paid for a  
12 hotel room that particular night that the grandmother  
13 described, that he had taken the young student to the  
14 particular pharmacy to buy something in relationship to -- that  
15 would indicate that there had been some kind of sexual contact.  
16 And so the grandmother threatening somebody or whatever, what  
17 does that have to do with the school board members or the  
18 school district?

19           **MR. GARZA:** And also, your Honor, that there had been  
20 a complaint against that particular instructor a year before by  
21 a different student --

22           **THE COURT:** By a different student.

23           **MR. GARZA:** -- as well, they learned that.

24           **THE COURT:** So how does this turn into a retaliation  
25 claim?

1           **MR. FERRARO:** So the only way it can turn into a  
2 retaliation claim, your Honor, is if they -- you have to  
3 remember, this accused is the son-in-law of the superintendent  
4 that they, "Team November," wanted to remove. And that's in  
5 evidence and that he's the son-in-law of the superintendent  
6 that "Team November" wanted to remove. So what happens is  
7 they --

8           **THE COURT:** "Team November" won or didn't win?

9           **MR. FERRARO:** Won.

10          **MR. MELTON:** They won.

11          **THE COURT:** Okay.

12          **MR. FERRARO:** So later two of them went to jail but  
13 that's neither here nor there I guess. One of the reasons that  
14 if you look at the affidavit of Norman Cordova, before they  
15 arrested him, his son, Carlo, they called him up. Norman would  
16 not support "Team November" and he --

17          **THE COURT:** Yeah, but when did they call Mr. Norman  
18 Cordova, and the whole thing about the billboard, but when did  
19 they call him about that?

20          **MR. FERRARO:** They called him about the billboard  
21 first, before the election. They called him later to tell him,  
22 ha-ha (phonetic), we're going to arrest your son. And that's  
23 in his affidavit.

24          **THE COURT:** Well, they weren't going to arrest his  
25 son, they were going to go file a complaint, which --

1           **MR. FERRARO:** They --

2           **THE COURT:** -- was signed by a justice of the peace.

3           **MR. GARZA:** They had received a complaint by a  
4 citizen, meaning the grandmother, which turns out to be true,  
5 they did (indisc.)

6           **THE COURT:** Yes, and can you imagine if they had not  
7 followed through with that information? Somebody could have  
8 had a serious cause of action against the school district.

9           **MR. FERRARO:** I agree that the facts the way you  
10 explained it exist. But they had still a duty to present a  
11 probable cause affidavit that was real, and that's our issue  
12 here. The signing police officer said, I didn't believe I had  
13 probable cause. The signing police officer checked with the  
14 chief of police of Donna Police Department who believed there  
15 was no -- this is all in the affidavit, who believed there was  
16 no probable cause. Padilla wanted to make this arrest and so  
17 he took this citizen's complaint, and without thoroughly  
18 investigating it and without --

19           **THE COURT:** Well, there was an investigation because  
20 they actually found that there was a -- that the Plaintiff had  
21 actually been at that hotel, the Plaintiff had actually paid  
22 for that hotel, that the Plaintiff had actually taken --

23           **MR. SPEAKER:** Wasn't a student.

24           **THE COURT:** -- the student to the drug store or  
25 had --

1           **MR. FERRARO:** She wasn't a student at the time that  
2 that occurred.

3           **THE COURT:** Well, at the --

4           **MR. FERRARO:** That was --

5           **MR. GARZA:** (Indisc.) she was a student.

6           **THE COURT:** Nevertheless, there had -- some of this  
7 had occurred while she was a student.

8           **MR. FERRARO:** Well, what occurred while she was a  
9 student was back in May. This was in -- all that was in  
10 September when she had graduated and no longer a student. That  
11 was the allegation.

12           **MR. GARZA:** The allegation was improper relationship  
13 with a student which began when she was a student at the high  
14 school and --

15           **MR. FERRARO:** Her last day of school allegedly.

16           **MR. GARZA:** No, actually that -- not for the  
17 allegations that had been made. There was allegations that  
18 there was some sexual contact, sexual conduct at the school  
19 during the school year, and then it continued on thereafter.  
20 All that was investigated. Some of it was proven as fact.  
21 We've actually got receipts from the hotel --

22           **THE COURT:** Right.

23           **MR. GARZA:** -- to verify that that's --

24           **THE COURT:** And that's while she was in school. Or  
25 was that later?

1           **MR. GARZA:** The hotel was right after she graduated.

2           **MR. FERRARO:** The hotel was not.

3           **MR. MELTON:** Late in September, your Honor.

4           **MR. GARZA:** But it came -- but the point is, part of  
5 the assertions that were being made by the individuals were  
6 literally verified by a receipt and which is kind of  
7 extraordinary as far as determining to confirm allegations such  
8 as this. But there -- in that -- what's important to consider  
9 here, too, your Honor, I think, and the point that perhaps  
10 Plaintiff's counsel is missing is, you know, Judge Contreras,  
11 the independent magistrate, reviewed all this information, and  
12 he made the determination that probable cause existed. So to  
13 argue that some other reviewing officer or somebody else has a  
14 differing opinion, the independent magistrate had very specific  
15 evidence that's been uncontroverted. We've outlined it ad  
16 nauseum in our summary judgment, in our replies, including the  
17 allegations that occurred one year prior to this one, which  
18 gave the magistrate the impression that a -- there's a  
19 probability that a violation could have occurred, so it's --  
20 the system begins and then they can start issuing an arrest  
21 warrant. And that's what happened here.

22           **THE COURT:** So your claim is that the grandmother was  
23 in a conspiracy with the November team?

24           **MR. FERRARO:** The grandmother worked the polls for  
25 the November team.

1           **MR. GARZA:** I think she was nonsuited. She was a  
2 defendant once and I think --

3           **THE COURT:** Then --

4           **MR. GARZA:** -- she's nonsuited.

5           **MR. FERRARO:** We nonsuited --

6           **THE COURT:** -- the grandmother's not a --

7           **MR. FERRARO:** -- her, but she worked the polls.

8           **THE COURT:** -- defendant here. But it makes no sense  
9 to say that the grandmother would use political reasons to go  
10 make accusations about the grandchild strictly for some  
11 campaign.

12           **MR. FERRARO:** Well, we don't believe that she made  
13 those strictly for the campaign, your Honor. We believe she  
14 made those strictly for money, because later they filed a suit  
15 and collected money.

16           **THE COURT:** Well that's a pretty bad thing to say  
17 about the grandmother, that she was doing it for money.

18           **MR. FERRARO:** Even though --

19           **THE COURT:** I mean, I would think any grandmother  
20 would be upset about this, money or no money.

21           **MR. FERRARO:** Assuming it --

22           **THE COURT:** If any of this is really true, I  
23 cannot --

24           **MR. FERRARO:** I agree, assuming it was true, your  
25 Honor.

1           **THE COURT:** Yes, but I cannot imagine that the  
2 grandmother would just be doing this for money and go --

3           **MR. FERRARO:** Well that's a matter of her  
4 credibility, your Honor. I agree --

5           **THE COURT:** Well, some of --

6           **MR. FERRARO:** -- with you that it tests credibility.

7           **THE COURT:** -- the things she said have definitely  
8 been proven to be true.

9           **MR. GARZA:** And they were verified by the --

10          **THE COURT:** She didn't make up -- she talked about  
11 the hotel room, that's been verified. She talked about another  
12 incident, that was verified. You know, --

13          **MR. FERRARO:** She -- the case was dismissed against  
14 Carlo Cordova, your Honor. Everything --

15          **THE COURT:** It wasn't dismissed, the Grand Jury no-  
16 billed it, right?

17          **MR. FERRARO:** Right, it was no-billed.

18          **MR. GARZA:** That's correct. And --

19          **MR. FERRARO:** But those things in September weren't a  
20 crime, your Honor.

21          **MR. GARZA:** And in the course of this lawsuit,  
22 through deposition testimony of the Defendant, we learned other  
23 things that were verified, such as them physically being in a  
24 truck together, even though they had disputed ever having that  
25 kind of contact before, being at his place of business, which

1 is something that the minor had mentioned earlier on, that was  
2 also verified. Now that was after the fact, those two facts  
3 weren't in the probable cause affidavit, we learned those in  
4 depositions. But we learned after the fact some of those  
5 things were further true and further confirmed.

6 **MR. FERRARO:** All those facts that he's talking  
7 about, your Honor, I agree they're in the -- that he's  
8 accurately stating the facts. They all occurred after she was  
9 a student and while she was seeking help for a bond.

10 **THE COURT:** For a what?

11 **MR. FERRARO:** A bond. Carlos Cordova's also a  
12 bondsman, works for a bondsman.

13 **MR. GARZA:** But it's consistent with her version of  
14 the events wherein she said, we went in his truck, went to the  
15 drug store to buy a morning after pill, were at the place of  
16 business, all that was confirmed after the fact, sworn  
17 testimony, by the Plaintiff in this suit. Her story checks out  
18 even further if you look at her testimony -- at his testimony,  
19 pardon me.

20 **THE COURT:** Is there anything else you all wanted to  
21 say?

22 **MR. FERRARO:** Well, I do want to point out that the  
23 affidavit, your Honor, was signed by McCandless, who didn't  
24 believe he had probable cause. That wasn't told -- Padilla  
25 took the affidavit to Judge Contreras. The fact that there was

1 -- that the arrest -- that McCandless did not believe there was  
2 probable cause in that affidavit was kept from Contreras.

3 **THE COURT:** He's not the one making the decision as  
4 to whether there's probable cause or not. He's just presenting  
5 the affidavit. He hasn't said I lied in the affidavit. All he  
6 has said is, I have this opinion. But he never said that  
7 anything that he wrote on there was a lie. It was the --

8 **MR. FERRARO:** He --

9 **THE COURT:** -- justice of the peace that made the  
10 determination as to whether there was probable cause.

11 **MR. FERRARO:** And he had no personal firsthand  
12 knowledge of things in the affidavit, he said that at his  
13 deposition.

14 **THE COURT:** Go ahead.

15 **MR. MELTON:** He was not present --

16 **MR. GARZA:** He swore to the statements in the  
17 affidavit. But the point of that affidavit, your Honor, that's  
18 why he takes it to an independent magistrate, to review the  
19 information and determine whether or not probable cause exists  
20 before an arrest occurs.

21 **MR. FERRARO:** For instance, McCandless was not  
22 present when the victim gave her statement. He --

23 **THE COURT:** Well, I'm ready to rule here.

24 **MR. FERRARO:** (Indisc.)

25 **THE COURT:** You all have filed enough stuff. With

1 regards to the Fourth Amendment false arrest claim, the Court's  
2 going to grant the motion for summary judgment. This was taken  
3 before a justice of the peace who made an independent decision  
4 to go ahead and do the arrest warrant.

5 With regards to the First Amendment retaliation  
6 claim, the Court is going to find that there is a fact issue  
7 based on the fact that there are disputes here as to an  
8 election, as to whether threats were made or not threat, while  
9 at the same time the school district says we have plenty of  
10 evidence, it had nothing to do with politics, and you say  
11 everything has to do with politics. And so that does create  
12 some kind of fact issue, and that's basically all the claim  
13 that there is here, if there is any claim. And the school  
14 district says we have plenty of defense that we can prove that  
15 this is -- we were right, and you have evidence that you say,  
16 well, we can prove that it was a retaliation claim. And so  
17 that's where we're at and that's all that's left here. Are we  
18 ready just to set this for a trial or what are we --

19 **MR. GARZA:** Your Honor, --

20 **THE COURT:** -- going to do here?

21 **MR. FERRARO:** We're ready for trial.

22 **MR. GARZA:** Your Honor, if I may (indisc.) there was  
23 a qualified immunity defense assertion as to the individuals as  
24 well. That's the McLynn (phonetic) argument regarding the  
25 issues of whether or not there was a clearly established

1 violation of law.

2           **MR. MELTON:** That's with respect to the false arrest  
3 claim.

4           **MR. GARZA:** Oh, so I guess --

5           **THE COURT:** There's nothing left --

6           **MR. GARZA:** The individuals --

7           **THE COURT:** -- of the false -- yes.

8           **MR. GARZA:** Got it.

9           **THE COURT:** There's nothing left. The only thing we  
10 have is the claim with regards to the school district and the  
11 retaliation.

12           **MR. GARZA:** Thank you for clarifying, your Honor.

13           **MR. MELTON:** Thank you, your Honor.

14           **MR. FERRARO:** (Indisc.)

15           **MR. GARZA:** Then, yes, your Honor, --

16           **THE COURT:** Well, do we need to set this --

17           **MR. MELTON:** We need to set a trial date.

18           **THE COURT:** -- for a hearing? Do you all need to  
19 prepare a pretrial order with what's left or what are you all  
20 going to do?

21           **MR. MELTON:** We prepared a pretrial order once but  
22 we --

23           **THE COURT:** Well, we --

24           **MR. MELTON:** -- need to amend it.

25           **MR. GARZA:** Probably have to narrow it down a little

1 bit.

2 **THE COURT:** Yes.

3 **MR. GARZA:** Or we could probably just kind of maybe  
4 tailor it a bit to see if we could narrow it down your Honor.

5 **THE COURT:** That would be helpful. And can we just  
6 set a status conference in about a month so we know whether  
7 we're ready for trial and when?

8 **MR. MELTON:** Yes, your Honor.

9 **MR. GARZA:** Yes, your Honor.

10 **THE COURT:** So we don't lose this case just sitting  
11 there.

12 **MR. MELTON:** Yes, your Honor.

13 **THE COURT:** Okay, we'll have a status conference on  
14 this case on June the 14th at 2:30 just to find out where we  
15 are and whether we're ready to set it for a trial, and  
16 everything else, and whether we've done everything we need to  
17 to be ready for a trial.

18 **MR. GARZA:** Thank you, your Honor.

19 **THE COURT:** Okay?

20 **MR. MELTON:** Thank you, your Honor.

21 **THE COURT:** Thank you all.

22 **MR. FERRARO:** Thank you.

23 **MR. GARZA:** May we be excused?

24 **THE COURT:** Yes.

25 **MR. GARZA:** Thank you.

MR. MELTON: Thank you.

(This proceeding was adjourned at 4:28 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

August 29, 2018

Dated

TONI HUDSON, TRANSCRIBER